# IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

## O.P.No.4029 of 1996(D)

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PETITIONER:-
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HOTEL RAJADHANI,
A PARTNERSHIP FIRM,
REPRESENTED BY ITS MANAGING PARTNER,
ABDUL RAHMAN, PALAKKAD.

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM

RESPONDENTS:-
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1. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
THIRUVANANTHAPURAM.

2. TAHSILDAR, PALAKADU TALUK, PALAKKAD.

3. DISTRICT COLLECTOR, PALAKKADU DISTRICT.

R1 TO R3 BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

O.P.NO.4029/1996-D.

## APPENDIX

PETITIONER'S EXHIBITS:-
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EXT.P1 - TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DT.21.1.1995.

EXT.P2 - TRUE COPY OF THE DEMAND NOTICE SERVED ON THE PETITIONER FROM THE 2ND RESPONDENT DATED 21.1.95.

EXT.P3 - TRUE COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 2.3.1995.

EXT.P4 - TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 18.1.1996.

RESPONDENT'S EXHIBITS:-
--- NIL.

- TRUE COPY -

**H.L.DATTU, C.J. & K.T.SANKARAN,J.**

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**O.P. NO. 4029 OF 1996 D**

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**Dated this the 9th August, 2007**

**JUDGMENT**

**H.L.DATTU, C. J**.

The petitioner is a partnership firm, represented by its Managing Partner. It had constructed a hotel building in Yakkara Municipality, Palakkad.

2. The Tahsildar, who is the competent authority under the provisions of the Kerala Building Tax Act, has computed the building tax payable under the Act and has quantified the tax liability in a sum of Rs.1,45,460/-. Aggrieved by that action of the Tahsildar, petitioner had preferred Ext.P3 revision before the third respondent, District Collector, Palakkad. The revisional authority has rejected the revision (Ext.P3), by Ext.P4 order, dated 18.1.1996. Therefore, the petitioner is before this Court for the following reliefs:

> "i) call for the records relating to Exts.P1 to P4 from Respondents 2 and 3 and quash Exts.P1, P2 and P4 by the issue of a writ of certiorari or other appropriate writ, direction or order;
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> ii) to strike down Section 5(2) of the Kerala Building Tax Act; 1975 (Act 7 of 1975) substituted by Section 6 of the Kerala Building Tax (Amendment) Act 1992 (Act 3 of 1992) and consequential other amendments introduced by Act 3 of 1992 in Act 7 of 1975 as arbitrary, unreasonable and unconstitutional;
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> iii) to strike down the proviso to Section 11(1) and Section 13(4) of the Kerala Building Tax Act insisting on pre-deposit of tax to maintain an appeal or revision."

3. This Court, in the case of **Shirly** v. **State of Kerala** (2006(2) KLT 306), has struck down Section 5(2) of the Kerala Building Tax Act on the ground that the same is violative of the constitutional provisions.

4. The authorities under the Act had applied the aforesaid provisions and had computed the tax liability of the petitioner under the Kerala Building Tax Act. Now, the said provision has been struck down. In our opinion, fresh assessment requires to be passed by the authorities under the Act. Therefore, we set aside Exts.P1, P2 and P4 orders and remand the matter for fresh assessment.

5. In so far as the second prayer is concerned, the same requires to be granted in view of the law laid down by this Court in **Shirly** v. **State of Kerala** (2006(2) KLT 306). Accordingly, the provisions of Section 5(2) is struck down on the ground that the same is arbitrary and violative of the constitutional provisions.

**6**. In so far as the third prayer is concerned, the appeal and revisional remedies are provided under the Act before the various forums created under the Statute itself. The various forums created under the Statute can definitely impose certain conditions to avail those remedies. In that view of the matter, the third prayer sought for in the Original Petition also cannot be granted by us. Therefore, we pass the following:

**O R D E R**

1) The Original Petition is disposed of.

2) The provisions of Section 5(2) of the Kerala Building Tax Act is struck down by following the dicta of this Court in 2006(2) KLT 306 (supra).

3) The prayer No.3 is rejected.

4) The orders passed by all the authorities under the Act are set aside and the matter is remanded to the Tahsildar to redo the matter in accordance with law, keeping in view the observations made by this Court in 2006(2) KLT 306 (supra). It is made clear that before passing any orders, the assessing authority shall afford an opportunity of being heard to the petitioner.

5) All the other contentions of both the parties are left open.

Consequent to the order passed in the Original Petition, C.M.P.No.7089 of 1996 is dismissed.

Ordered accordingly.

**(H.L.DATTU)**
**Chief Justice**

**(K.T.SANKARAN)**
**Judge**

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**H.L.DATTU, C.J. & K.T.SANKARAN, J.**

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**O.P.NO. 4029 OF 1996 D**

**JUDGMENT**

9th August, 2007

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